



APPROVED MINUTES
CITY OF SCOTTSDALE
CHARTER REVIEW TASK FORCE

MONDAY, OCTOBER 26, 2009

CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251

PRESENT: Steven J. Twist, Chair
Susan Bitter Smith
Jim Derouin
Cindi Eberhardt
Alan Kaufman
Charlie Smith
Lisa Johnson Stone

STAFF: Carolyn Jagger, City Clerk
Sherry Scott, Deputy City Attorney
Brent Stockwell, Senior Advisor

Call to Order/Roll Call

Chairman Twist called the Charter Review Task Force regular meeting to order at 5:02 P.M. Roll call confirmed the presence of Task Force members as noted.

1. Approval of Minutes – September 28, 2009

Alan Kaufman made a correction to the September 28 meeting minutes, replacing the word *Articles* with *Sections* on page four of eight, which resulted in the corrected sentence, "There were no changes proposed in Sections 1 or 2."

MOTION and VOTE

CINDI EBERHARDT MOVED APPROVAL OF THE SEPTEMBER 28 MEETING MINUTES AS CORRECTED, SECONDED BY ALAN KAUFMAN, PASSED 7-0.

CINDI EBERHARDT MOVED APPROVAL OF THE OCTOBER 5 MEETING MINUTES, SECONDED BY ALAN KAUFMAN, PASSED 7-0.

Chairman Twist announced that at their October 20 meeting, the City Council unanimously approved the Charter Review Task Force's five election recommendations. He noted that there is still time to provide staff with feedback on the proposed ordinance and ballot language before they goes to Council on November 3.

Brent Stockwell explained that the item was agendized so that Task Force members would know exactly how the election charter amendments were moving forward. Mr. Stockwell explained that staff took direction from the Council at the October 20 meeting and created a staff report, which includes the ordinance and the ballot language. The Council will consider this item at the November 3 meeting. The Council is scheduled to approve calling the election and ask for contingency reserves to pay for the election at the November 17 meeting. Mr. Stockwell stated that staff welcomes feedback from Task Force members on the report before them.

2. Public Comment

Ray Torres, representing the ORANGE Coalition, spoke about the Coalition's proposed amendments, and stated that the Coalition attempted to make the language more charter-like and aspirational. Mr. Torres gave an overview of the Coalition's proposed amendments and highlighted their process and intentions.

Steven Hirsch, an attorney, spoke in support of the ORANGE Coalition. Mr. Hirsch addressed a memo circulated to the Task Force members this week on preemption. He discussed the history of preemption cases in Arizona, with regard to home rule municipalities like Scottsdale. Mr. Hirsch advised that none of the amendments on eminent domain proposed by the ORANGE Coalition would run afoul of a preemption doctrine. Mr. Hirsch concluded with an offer by the ORANGE Coalition to educate Task Force members on submitted concepts so that they could respond to questions from the Council on condemnation-oriented amendments.

Jim Derouin asked for Mr. Hirsch's opinion on a municipality's ability to define what fair market value is and not have it preempted by the State. Mr. Hirsch explained a two-step process of initial analysis, and concluded that the City could reach its own conclusions on some definitional points as long as it does not expand the power of eminent domain beyond what the State provides.

Chairman Twist summarized the discussion by stating that the City has to be at least as generous as is required by State law, but could decide to be more generous in the exercise of its eminent domain power. Mr. Hirsch agreed. Chairman Twist asked if this analogy could also be applied to defining public purpose, in that the City has to be consistent with general State law in determining what a public purpose is for Scottsdale, but could be narrower than what is defined in State law. Mr. Hirsh agreed with this summation.

Susan Bitter Smith asked if there would be legislative action that would be litigated if a charter was amended to allow preemptive issues. In response, Mr. Hirsch gave a detailed explanation of what the State law would consider preemptive.

Chairman Twist asked if was true that the City has the ability to use less power than what is granted by the State. For example, if the State legislature passed a law saying that cities are

empowered to do x, but Scottsdale decides it is only going to permit x-y. Mr. Hirsch confirmed that Chairman Twist was correct.

Susan Bitter Smith questioned the terms value and fair market value referenced in Title 9. If, for example, Scottsdale decided that fair market value means common industry practice plus something else, how would that affect gift statutes from the City to individual property owners. Citing Title 9-284, Mr. Hirsch, opined that if you tried to expand those fundamental constitutional provisions of extending gifts or extending credit, you would run afoul of the provisions in Title 9.

Alan Kaufman pointed out that the materials from the City Attorney's Office offered a different viewpoint. Mr. Kaufman asked Sherry Scott to explain why the Attorney's Office came to conclusions that were different from those of Mr. Hirsch. Sherry Scott replied that it is the City Attorney's analysis that condemnation and eminent domain are a matter of State-wide concern, and that cities cannot legislate in conflict of State law. Ms. Scott said it appears that it would be a conflict to have a completely different definition than State law. Ms. Scott noted that condemnation laws are not just for private property owners; but are also for the public. A weighing must occur by the City between a private property owner's rights and the public's right to obtain that property at a fair market value. She believes State laws attempt to balance those two rights.

Susan Bitter Smith asked if Sherry Scott was advocating condemnation change in ordinance language versus Charter language. Sherry Scott replied that she was not advocating for a change in ordinance, but a change in ordinance would probably be better than a change in the Charter. Ms. Scott explained that the Council directs condemnation actions. If the Council does not think there is a significant public use, a condemnation action will not be initiated. Ms. Scott explained that the City needs to be careful about legislating a whole different set of rules for itself from the State when it is implementing its powers of eminent domain.

Alan Kaufman noted Mr. Hirsch's statement that home rule municipalities cannot expand their powers of eminent domain but are permitted to narrow them. Mr. Kaufman asked Sherry Scott if she agreed that the City's powers cannot be expanded but may be narrowed. Ms. Scott responded that it is her opinion that the City cannot be directly in conflict with State law, and restated that condemnation is for private property owners, as well as the public. Ms. Scott said she does not understand the concept of expanding and narrowing because there is a weighing of the public and private property owner's rights when determining a fair price. Ms. Scott disagrees with Mr. Hirsch's assertion that the City can completely redefine what a public use is because State statute very clearly defines it.

Jim Derouin asked Mr. Hirsch if he believes that, post Prop 207, problems like the City of Mesa experienced with Bailey's Brake Shop and Tempe Marketplace could arise in the City of Scottsdale. Mr. Hirsch responded yes on the first issue (Bailey's Brake Service), and that the second example could be eroded by legislative action. Mr. Hirsch clarified that, had Prop 207 been in place, he would have been able to resolve the Tempe Marketplace case. He added that the Tempe Marketplace issue was post Bailey's Brake Shop and pre-Prop 207 so it was hard to say definitively.

Mr. Derouin asked for a history of Scottsdale's condemnation cases over the last five to ten years. Ms. Scott reported that her office reviewed condemnation cases since 2004 and found the City had 43 condemnation cases. Ms. Scott explained that the vast majority of cases were for the Preserve. The eight cases that were not for the Preserve were for utilities and right-of-way issues.

3. Update on Status of Proposed Charter Election Recommendations

(Chairman Twist and Brent Stockwell gave a brief update on the proposed Charter election recommendations at the beginning of the meeting.)

No action was taken.

4. Discussion and possible action regarding recommendations to the City Council regarding possible amendments to the Scottsdale City Charter

Chairman Twist addressed Article 1, Section 3 – Powers of the City

Chairman Twist explained that the Task Force may not be ready to come to a final decision tonight regarding recommendations to the City Council on Amendments to Article 1, Section 3 on eminent domain. Chairman Twist asked for comments on the proposal from Jim Derouin, who worked extensively on modifying the language.

Jim Derouin asked for clarification from Alan Kaufman on the parts he did not agree with, and whether he felt the administrative versus legislative language dichotomy was appropriate.

Alan Kaufman explained that there is a traditional distinction between administrative and legislative actions that is understood by the courts, city managers, and people who follow city government. Mr. Kaufman believes the language that Jim Derouin came up with (which was subsequently modified by the Goldwater Institute) was going down the right path, with one important caveat. Mr. Kaufman read the submitted passage for member's consideration.

Charlie Smith said he did not understand either of the sentences in Paragraph O. Extensive discussion ensued to clarify the language in Paragraph O.

The Task Force agreed to continue the discussion on eminent domain and Prop 207 waivers to the next meeting.

Chairman Twist addressed Article 2, Section 6 – Duties of the Mayor

Chairman Twist asked the Task Force members to address Michael Kelly's amendment proposals. There was a brief discussion on Mr. Kelly's proposals.

MOTION AND VOTE:

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND ALL CHANGES TO ARTICLE 1, SECTION 3, SUBSECTION C. CHARLIE SMITH SECONDED. MOTION PASSED 7-0

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND ALL CHANGES PROPOSED TO ARTICLE 1, SECTION 3, SUBSECTIONS D, G AND I. ALAN KAUFMAN SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 5 – Limitations on Filing for Election

There was discussion on the staff comments submitted to the Task Force.

Sherry Scott pointed out that State Statutes contain the same language that is in Article 2, Section 5 of the Scottsdale Charter. As a result, Ms. Scott does not think this is an area of the Charter that requires changing. Alan Kaufman agreed that the Task Force should not and cannot change this section.

Chairman Twist addressed Article 2, Section 7 – Mayor Pro Tempore

There was extensive discussion on the City's history with the term Pro Tempore, the Council rotation that occurs to fill it, and the ramifications of amending this section.

LISA JOHNSTON STONE MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 7, RELATING TO THE MAYOR PRO TEMPORE BE CHANGED TO REFER TO A VICE MAYOR. JIM DEROUIN SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 8 – Salaries of Mayor and Councilmen

There was extensive discussion on the process of raising salaries for the Mayor and Council.

Charlie Smith spoke about the history of the section regarding salaries of the Mayor and Council. Mr. Smith reminded the Councilmembers who vote for Council salary increases do not benefit from them, because the increases do not go into effect until after their terms end.

Alan Kaufman noted that the Mayor and Council salaries in Scottsdale are substantially less than in other cities around Scottsdale.

Susan Bitter Smith did not support adding the associated benefit packages to this section of the Charter. Because charters are not easily changed and benefits frequently change, she believes benefit packages should be addressed by ordinance and not in the Charter. There was agreement by the other Task Force members.

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 8, RELATING TO MAYOR AND COUNCIL SALARIES, BE AMENDED AS FOLLOWS "SECTION 8. SALARIES OF MAYOR AND THE COUNCIL. THE MONTHLY SALARY OF THE MAYOR AND COUNCIL SHALL BE INCREASED BY ORDINANCE, BUT SHALL NOT BE INCREASED DURING THE CURRENT TERM OF THE MAYOR AND COUNCIL ENACTING SUCH ORDINANCE." CHARLIE SMITH SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 9 – Council to be Judge of Qualifications of its Members

There was extensive discussion on this section.

Staff was directed to provide copies of the model city charter section on this issue to compare and review before next meeting.

The Task Force members continued the discussion of Article 2, Section 9, to the next meeting.

Chairman Twist addressed Article 2, Section 11 – Vacancies in Council and Office of Mayor

The Task Force reviewed a staff proposal to consider increasing the timeframe from 30 to 60 days prior to the final date for filing of nomination provisions. City Clerk Carolyn Jagger explained the reasoning for proposing the change. If a vacancy on the Council occurs more than 31 days, but less than 60 days, prior to the deadline for filing nomination petitions, it could be challenging for prospective candidates to obtain the necessary petition signatures.

Charlie Smith clarified that Ms. Jagger was drawing a distinction between people who had already decided to run for election and those who may have just decided to run because a vacancy appeared.

Susan Bitter Smith stated that 30 days is what is allowed by State statute for petitioners to collect signatures and that she is not inclined to expand time for someone who wants to run for office in Scottsdale, explaining that they should be consistent with State law.

Chairman Twist addressed Article 2, Section 12 – Council Meetings; Open to Public

Sherry Scott reported that her office had raised an issue with the current Charter's provision on the number of Council meetings that must be held per month. Ms. Scott stated that the Task Force may want to consider changing the requirement to meet twice every month to something that provides more flexibility.

There was extensive discussion on the requirements of the open meeting law and clarification of executive sessions, work study sessions, and regular meetings of the City Council.

Jim Derouin asked that relevant sections relating to the qualification and removal of Council meetings from the model city charter be provided to the Task Force members prior to the next meeting.

MOTION AND VOTE:

CINDI EBERHARDT MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 12, BE AMENDED TO ADD THE PHRASE "IN A MANNER CONSISTENT WITH STATE LAW." LISA JOHNSON STONE SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 13 – Special Meetings

Chairman Twist stated that the Task Force should work to ensure that the City avoids the appearance of violating the open meeting law.

Carolyn Jagger explaining that the proposed changes from the City Clerk's office were a compilation of various things that have come up over the years. Ms. Jagger stated that the issue usually comes up during the summer break. To avoid raising concerns about the open meeting law, Ms. Jagger stated that the Task Force may want to consider amending the Charter to allow three members of the Council to call a special meeting, rather than the four members currently required.

There was extensive discussion on what constitutes the Mayor's absence, the Vice Mayor's duties, the need to avoid violating open meeting law, and whether less than a majority of the Council should be allowed to call a special meeting, but no action was taken.

Chairman Twist addressed Article 2, Section 14 – Rules of Procedure; Journal

MOTION AND VOTE:

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 14, BE AMENDED TO STRIKE THE WORD "JOURNAL" AND INSERT THE WORD "RECORD." ALAN KAUFMAN SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 15 – Quorum; Ayes and Nays

MOTION AND VOTE:

JIM DEROUIN MOVED THAT THE TASK FORCE RECOMMEND THAT ARTICLE 2, SECTION 15, BE AMENDED TO REPLACE THE WORD "JOURNAL" WITH "RECORD." SUSAN BITTER SMITH SECONDED. MOTION PASSED 7-0.

Charlie Smith explained the importance of making sure that each Council member votes on each question before them, unless they have declared that they have a conflict of interest, or have an appearance of conflict of interest, and leave the room. Sherry Scott explained that this is stated in the City Code. Mr. Smith asked for further clarification on the number of votes required to take action. Sherry Smith stated that four members were required; not the majority of members present, but the majority of the Council.

There was extensive discussion of the quorum rules and open meeting law, as well as subcommittee clarification.

Chairman Twist addressed Article 2, Section 16 – Consideration of Petitions

Chairman Twist read the proposed changes to the Task Force members.

Ms. Jagger offered to bring clarifying language back for the Task Force's consideration and discussion next week.

Charlie Smith asked if the model city charter dealt with this issue.

Chairman Twist asked staff to research and bring back language clarifying the petition section of Article 2, Section 16.

No action was taken.

Chairman Twist addressed Article 2, Section 19 – Limitation of Terms

There was discussion on Council term limits.

SUSAN BITTER SMITH MOVED THAT THE TASK FORCE RECOMMEND STRIKING THE LAST SENTENCE OF ARTICLE 2, SECTION 19. ALAN KAUFMAN SECONDED. MOTION PASSED 7-0.

Chairman Twist addressed Article 2, Section 20 – Internal Audit

Brent Stockwell explained that it might be best to put off discussion on the internal auditor section until the next meeting. Mr. Stockwell explained that Sharron Walker, the new City Auditor, had recently put together background information for the Task Force members' review and consideration. Mr. Stockwell stated that he would provide electronic copies for the members to review before their next meeting.

Charlie Smith asked the members to consider all Council appointed positions at the same time.

No action was taken.

5. Review, discuss, and possibly amend draft agenda for November 2, 2009 meeting

After discussion, the Task Force agreed that the order of topics for the next meeting would be to first, continue the discussion on Article 1 – condemnation and eminent domain; second, continue discussion on Article 12, Section 9 – Council to be judge of qualifications of its members, and Section 16 – Consideration of petitions; third, to discuss together all sections relating to Council-appointed staff, which starts in Article 2, Section 20, and continues through Articles 3, 4, and 11; and fourth, to hold a discussion about districting, which could result in additional recommendations regarding Article 2.

It was clarified that the Task Force may invite comment from members of the public on any item on the agenda.

With no further business to discuss, the meeting adjourned at 8:33 P.M.

SUBMITTED BY:

Linda Pellegrini
Administrative Secretary

REVIEWED BY:

Brent Stockwell
Senior Advisor

Officially approved by the Charter Review Task Force on November 16, 2009